

MEMORANDUM: FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES
PROVIDING FEDERAL FINANCIAL ASSISTANCE

FROM: THE ATTORNEY GENERAL

SUBJECT: Enforcement of Nondiscrimination Laws in Programs that Receive
Recovery Act Funding

Since the enactment of the American Recovery and Reinvestment Act of 2009 (Recovery Act), the federal government has distributed a large number of federal grants as part of the effort to stimulate the American economy. The Federal government has an ongoing responsibility to ensure that all Americans receive the benefits of the taxpayers' money.

Pursuant to Executive Order 12250, the Department of Justice (DOJ) has been taking a number of steps to ensure that Federal agencies are effectively fulfilling their obligation to enforce statutes that prohibit discrimination in programs or activities that receive Recovery Act funds. Under the Executive Order, DOJ is charged with ensuring the consistent and effective enforcement of Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination including language access for limited English proficient persons), Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of disability), Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in education and training programs), and a variety of program-specific statutes that prohibit discrimination in federally funded programs.

Because these prohibitions against discrimination in federally funded programs apply to recipients of Recovery Act funding, it is imperative that the awarding Federal agencies ensure that the fund recipients do not discriminate. Indeed, on April 3, 2009, the Office of Management and Budget issued Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, stating that "agencies should encourage recipients to implement best practices for ensuring that all individuals - regardless of race, gender, age, and national origin - benefit from the Recovery Act."

Federal agencies have done an outstanding job in getting funds to recipients as quickly as possible, in order to achieve the Recovery Act's purpose of further stimulating the economy and creating jobs. For the awards made and in process, and for the instances in which awards are still pending, there are steps that Federal agencies can take to encourage nondiscrimination in Recovery Act funded programs. As an initial step, Federal agencies should examine their current practices for ensuring nondiscrimination in Recovery Act funded programs, and evaluate

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whether these are effective at detecting and deterring discriminatory conduct. Agencies should, as they oversee and distribute funds, examine their practices to see that the benefits of these economic stimulus programs are distributed in a non-discriminatory manner. Specifically, agencies should take necessary steps to ensure that this money is spent in a manner that does not exclude or otherwise discriminate against any individual in violation of Title VI, Title IX, or Section 504. None of these efforts will require new regulatory initiatives; existing regulations that permit agencies to enforce Title VI, Title IX, and Section 504 should let us do the job. We also recommend that Federal agencies consider the following approaches:

- Federal funding agencies should post notices prominently on their websites concerning the applicability of Title VI, Title IX, and Section 504 to Recovery Act funded projects.
- Federal agencies should require recipients to adhere to the terms of their civil rights assurances and other agreements, including any provisions pertaining to the collection and analysis of racial and ethnic data.
- Federal agencies should utilize readily available data through demographic mapping and other technologies, to identify situations that warrant pre- or post-award compliance reviews, or technical assistance to applicants and recipients of Recovery Act funding.

Pursuant to the DOJ Title VI Coordination Regulations, 28 C.F.R. ' 42.412, I have delegated to the Civil Rights Division my authority to promulgate directives to federal agencies as are necessary to ensure that we all carry out our responsibilities to vigorously enforce these statutes. I have instructed the Civil Rights Division to utilize its oversight authority fully and to assist you in achieving nondiscrimination. This may include information sharing, trainings, targeted partnerships, and the provision of technical assistance on data collection and other topics pertinent to civil rights enforcement.

In the coming weeks, staff in the Civil Rights Division's Coordination and Review Section (COR) will reach out to their agency counterparts to discuss your agency's current practices for enforcing the prohibitions of Title VI, Title IX, and Section 504. In addition, I urge you to share periodically with COR recent developments, other initiatives for enforcing Title VI, any new approaches that you have adopted, and any substantial Recovery Act case developments. Moreover, in accordance with the Guidelines for the Enforcement of Title VI, 28 C.F.R. ' 50.3, and the DOJ Title VI Coordination Regulation, 28 C.F.R. ' 42.407(d), you should discuss with COR any potential refusals and terminations of assistance, and formal enforcement actions under consideration.

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I look forward to working with you to further strengthen and improve enforcement of civil rights laws throughout the nation. The enormity of the economic stimulus initiative presents us with a unique opportunity and obligation to ensure that federal dollars are spent consistent with our nation's civil rights law. Thank you for your continued partnership in this critically important endeavor.

If you have any questions, please call Christine Stoneman, Special Legal Counsel in the Coordination and Review Section of the Civil Rights Division at (202)616-6744.